IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2072 OF 2007
ALONGWITH
CIVIL APPLICATION NO.1821 OF 2007

Shri.Tukaram Duma Bankar & Ors. ....Petitioners/
Orig.Defs.

V/s.

Shri.Ramesh Eknath Bankar & Ors. ...
Respondents/
Orig.Plaffs.

Ms.Kher i/b. Mr.P.B. Shah for Petitioners.
None for Respondents.

CORAM : V.M. KANADE, J.

DATED : 18th JULY, 2007.

P.C:-

1. Heard learned counsel for the Petitioners.

2. The Petitioners are challenging the order passed by the Trial Court dated 23/2/2007 whereby an application filed by the Respondents/orig.Plaintiffs for amendment of the suit for bringing on record subsequent events was allowed.

3. Learned counsel for the Petitioners submitted that the Respondents had on earlier occasion filed suit in the year 1988 in which they had claimed that encroachment has been made by the Petitioners

over their land. That suit was dismissed and even appeal which was filed against the said order was dismissed by the Appellate Court. She submitted that, therefore, it was not open for the Respondents to seek amendment of the plaint since they were very well aware of the boundaries of their suit. She submitted that even their application for temporary injunction was rejected by the Trial Court. She submitted that evidence had already been recorded in the Trial Court.

4. It is not possible to accept the submissions made by the learned counsel for the Petitioners. Perusal of the application filed by the Respondents discloses that said application was filed for the purpose of bringing on record subsequent events, which according to the Respondents, had taken place after present suit was filed. It is always open for the Petitioners herein to file written statement and raise all the issues which have been averred herein. Hence, there is no reason to interfere with the impugned order. Writ Petition is dismissed, accordingly.

5. The Petitioners may raise these grounds in their written statement and if so raised, the Trial Court shall consider them on merits and in accordance with law at the time of final disposal of the suit. With

these directions, writ petition is dismissed. In view of disposal of writ petition, nothing survives in the Civil Application. Civil Application is disposed of accordingly.

V.M. KANADE, J.